

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: §
NORTH PARK OFFICE TOWER, L.P. § CASE NO. 09-39205
Alleged Debtor § (CHAPTER 11 Involuntary)

KEVIN ORTON'S RESPONSE TO
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

TO THE HONORABLE JUDGE OF SAID COURT:

Kevin Orton, hereafter "Orton", represents:

RESPONSE TO MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

1. Docket entry no. 17 is the alleged debtor's Motion to Dismiss for Failure to State a Claim alleging that Orton's status as a co-debtor with the Alleged Debtor does not qualify him to be a petitioning creditor under 11 U.S.C. § 303.

2. A guarantor of a debt that is owed by the Alleged Debtor does make Orton a creditor for purposes of being a petitioning creditor. In *In Re Gills Creek Parkway Associates, L.P.* 194 B.R. 59 (D. S.C. 1995), citing with approval *In Re All Media Properties, Inc.* 5 BR 126, 133 (Bankr. S.D. Tex. 1980), a guarantor of the debt of an alleged debtor is a petitioning creditor if the debt has been accelerated. Once a debt is accelerated, it is due and payable in full.

3. Here, the debt that Orton guaranteed on its own terms and was not paid. It is in default. Orton may be a petitioning creditor.

ANSWER TO MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

4. Orton denies the averments contained in the first sentence of the Motion.
5. Orton admits the averments made in the second sentence of the Motion.
6. Orton denies the averments contained in the third sentence of the Motion.

7. Orton admits the averments in the sixth sentence of the Motion.

WHEREFORE, Orton prays that the Court deny the Alleged Debtor's Motion to Dismiss for Failure to State a Claim and grant Orton such other and further relief, in law and in equity, as is just.

Respectfully submitted,

By: 

Alan Gerger

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ATTORNEYS FOR KEVIN ORTON

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served upon the party shown below by facsimile on **January 4, 2010:**

Richard E. Wakefield
2500 West Loop South, Suite 255
Houston, Texas 77027

By: 

Alan S. Gerger